

Summary of the Ethics Rules for Post-Government Employment

Please note that reliance on the oral or written advice of an agency ethics official or the Office of Government Ethics cannot ensure that a former employee will not be prosecuted for a violation of 18 U.S.C. §§ 203 or 207. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. In the case in which the Office of Government Ethics issues a formal advisory opinion in accordance with subpart C of 5 C.F.R. part 2638, the Department of Justice will not prosecute an individual who acted in good faith in accordance with that opinion. Additionally, ethics officials represent the Government and the provision of advice by an ethics official does not create an attorney-client relationship or any other confidential relationship. Accordingly, a current or former employee who discloses information to an agency ethics official, to a Government attorney, or to an employee of the Office of Government Ethics does not personally enjoy an attorney-client privilege with respect to such communication.

FINANCIAL DISCLOSURE REPORTING REQUIREMENT

OGE Form 278. If you are required to file an OGE Form 278 in your current position, you must file a termination OGE Form 278 on or before the 30th day after you leave Government service. If you file your OGE Form 278 more than 30 days after the due date or more than 30 days after the last day of an extension, whichever occurs later, you must pay the United States a \$200 late filing fee.

Post-Government Employment Restrictions

18 U.S.C. § 207

NONE OF THE PROVISIONS OF 18 U.S.C. § 207 BAR ANY FEDERAL EMPLOYEE, REGARDLESS OF RANK OR POSITION, FROM ACCEPTING EMPLOYMENT WITH ANY PRIVATE OR PUBLIC SECTOR EMPLOYER. THEY MAY, HOWEVER, RESTRICT CERTAIN COMMUNICATIONS THAT FORMER EMPLOYEES MAY MAKE AS A REPRESENTATIVE OF A THIRD PARTY BACK TO THE FEDERAL GOVERNMENT AND CERTAIN ASSISTANCE THEY MAY PROVIDE TO THIRD PARTIES.

Your annual rate of pay, your pay schedule, and whether or not you were assigned to DOI from a private sector organization under the Information Technology Exchange Program (5 U.S.C., chapter 37) determine exactly which of the statute's provisions will apply to you. Specifically, when you leave Federal service:

If your annual rate of basic pay (excluding locality pay or additional pay such as bonuses, awards, and various allowances) is less than 86.5% of the annual rate of basic pay for Executive Schedule Level II (that is, less than \$160,111.50 effective January 10, 2016), you may be subject to three provisions -- 18 U.S.C. §§ 207(a)(1), (a)(2), and (b).

If you are in a position included in Levels II through V of the Executive Schedule, or your annual rate of basic pay (excluding locality pay or additional pay such as bonuses, awards, and various allowances) is at or above 86.5% of the annual rate of basic pay for Executive Schedule Level II (that is, at or above \$160,111.50 effective January 10, 2016), you may be subject to five provisions -- 18 U.S.C. §§ 207(a)(1), (a)(2), (b), (c), and (f).

Executive Schedule Level I employees (Very Senior Employees) who terminate from Federal service may be subject to the five following post-employment provisions -- 18 U.S.C. §§ 207(a)(1), (a)(2), (b), (d), and (f).

Finally, if you are assigned from a private sector organization to DOI under the Information Technology Exchange Program (5 U.S.C., chapter 37), you will also be subject to the prohibition contained in 18 U.S.C. § 207(l).

The post-employment prohibitions are explained as follows:

18 U.S.C. § 207(a)(1). “Lifetime” ban on making a communication or appearance involving particular matters involving a specific party or parties. “Lifetime” refers to the lifetime of the matter, not the lifetime of the former employee.

Prohibits all former Government employees from knowingly making, with the intent to influence, any communication to or appearance before an employee of any department, agency, or court of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties in which the former employee participated personally and substantially as a Government employee, and in which the United States is a party or has a direct and substantial interest. This restriction also applies to former special Government employees. This provision does not prohibit behind-the-scenes assistance.

IMPORTANT DEFINITIONS:

“Behind-the-scenes assistance” is assistance provided to another that does not involve the former employee making a communication to or appearance before an employee of the United States. However, if the former employee intends that a communication, made by someone else to an employee of the United States, be attributed to the former employee, this is considered a communication by the former employee and does not constitute “behind-the-scenes assistance.”

"Communication to or appearance before" means representational appearances and communications before a Federal Government department, agency, or court, made in an attempt to influence the Federal Government concerning a particular matter in which the former employee was personally and substantially involved.

A "particular matter involving specific parties" typically involves a proceeding affecting the rights of the parties or an isolatable transaction or related set of transactions between identifiable parties, and the United States must be a party to OR have a direct and substantial interest in the matter.

Note: The term "particular matter involving specific parties" includes any investigation, application, request for a ruling or determination, rulemaking that applies to specific parties, contract, cooperative agreement, partnership agreement, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. It does not include general rulemaking, general legislation, or general policy issues.

"Personal and substantial participation" means direct participation as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise. It includes the participation of a subordinate when that subordinate was actually directed by the former employee in the matter. The participation must be of significance to the matter or form a basis for a reasonable appearance of such significance. Involvement on a peripheral issue may not be enough. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort.

“With the intent to influence” – A communication or appearance is made with the intent to influence when made for the purpose of:

- a. Seeking a Government ruling, benefit, approval, or other discretionary Government action; or
- b. Affecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy.

Example 1: A former employee of the National Park Service (NPS) signs a grant application and submits it to NPF on behalf of a nonprofit organization for which she now works. She has made a communication with the intent to influence an employee of the United States because her communication was made for the purpose of seeking a Government benefit.

Example 2: A former Government employee calls an agency official to complain about the auditing methods being used by the agency in connection with an audit of a Government contractor for which the former employee serves as a consultant. The former employee has made a communication with the intent to influence because his call was made for the purpose of seeking Government action in connection with an issue involving an appreciable element of dispute.

Change in circumstances. If, at any time during the course of a communication or appearance, it becomes apparent that circumstances have changed which would indicate that any further communication or appearance would be made with the intent to influence, the former employee must refrain from such further communication or appearance.

Example: A former Government employee accompanies another employee of a contractor to a routine meeting with agency officials to deliver technical data called for under a Government contract. During the course of the meeting, an unexpected dispute arises concerning certain terms of the contract. The former employee may not participate in any discussion of this issue. Moreover, if the circumstances clearly indicate that even her continued presence during this discussion would be an appearance made with the intent to influence, she should excuse herself from the meeting.

Mere physical presence intended to influence. Under some circumstances, a former employee's mere physical presence, without any communication by the employee concerning any material issue or otherwise, may constitute an appearance with the intent to influence an employee of the United States.

Example: A former Regional Director of the U.S. Fish and Wildlife Service (USFWS) becomes a consultant for a company seeking an incidental take permit. She is hired by the company to coordinate and assist in the permit application process. She accompanies company officers to an informal meeting with USFWS employees that is held for the purpose of allowing company officials to explain to the USFWS why they believe the company's application meets the permit application requirements. The former employee is introduced at the meeting as the company's adviser, but she does not make any statements during the meeting concerning the application. She is paid a fee for attending this meeting. She has made an appearance with the intent to influence.

Purely social contacts do not constitute communications to and appearances before employees of the United States with the intent to influence.

Example: A BLM employee participated in a proceeding to review the renewal of a right of way for a power company. After terminating Government service, he is hired by the company that holds the right of way. At a cocktail party, the former employee meets his former supervisor who is still employed by BLM and begins to discuss the specifics of the right of way renewal case with him. The former employee is directing his communication to a BLM employee in his capacity as an employee of the BLM. Moreover, as the conversation concerns the right of way renewal matter, it is not a purely social contact and is therefore made with the intent to influence the Government.

Examples applying 18 U.S.C. § 207(a)(1):

Example 1: A Program Analyst in the Fish and Wildlife Service works on a lawsuit involving Q Company. After leaving Federal service, the former employee accepts a job with a consulting firm that has Q Company as a client. She is asked by the consulting firm to represent it before the Environmental Protection Agency in connection with that same lawsuit.

- She may not do so. For the lifetime of this litigation, she may only represent the United States before an Executive Branch or Judicial Branch agency on this matter.

Example 2: A Government employee, who participated in recommending specifications for a contract awarded to Q Company for the design of certain ground water testing programs, joins Q Company and does work under the contract. He is asked to accompany a company vice-president to a meeting to state the results of a series of trial tests, and does so. No violation occurs when he provides the information to his former agency. Communications which do not include “intent to influence” are not prohibited. During the meeting, however, a dispute arises as to some terms of the contract, and he is called upon to support Q Company's position.

- He may not do so. If he had reason to believe that the contractual dispute would be the subject of the meeting, he should not have attended.

Key Elements for 18 U.S.C. § 207(a)(1)

- Knowingly Make
- Appearance or Communication
- Intent to Influence

- To or Before an Employee
- On Behalf of Any Other Person
- U.S. is a Party or Has a Direct and Substantial Interest
- Particular Matter Involving Specific Parties
- Same Particular Matter
- Where Participated Personally and Substantially

18 U.S.C § 207(a)(2). Two-year restriction on particular matters involving a specific party or parties where the matters were under your official responsibility as a supervisor

Prohibits all former Government employee supervisors from knowingly making, within two years after terminating Government service, with the intent to influence, any communication to or appearance before an employee of any department, agency, or court of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, when the former employee knows or reasonably should know that the matter was actually pending under his or her official responsibility during his or her last year of Government service. This provision does not prohibit behind-the-scenes assistance.

IMPORTANT DEFINITIONS:

“Behind-the-scenes assistance” – is defined the same way as for 18 U.S.C. § 207(a)(1).

"Communication to or appearance before" - is defined the same way as for 18 U.S.C. § 207(a)(1).

"Particular matter involving specific parties" - is defined the same way as for 18 U.S.C. § 207(a)(1).

“With the intent to influence” – is defined the same way as for 18 U.S.C. § 207(a)(1).

"Official Responsibility" - means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action. Official responsibility is usually defined by statute, regulations,

written delegation of authority, or job description. AN EMPLOYEE'S RECUSAL FROM OR OTHER NON-PARTICIPATION IN A MATTER DOES NOT REMOVE IT FROM HIS OR HER OFFICIAL RESPONSIBILITY. When facts suggest that a particular matter involving specific parties could have been actually pending under his official responsibility, a former employee should seek information from an agency ethics official to clarify his role in the matter.

"Actually pending" - means the matter was in fact referred to or under consideration by persons within the former supervisor's area of responsibility.

"Last Year of Service" - means this two-year prohibition only applies to matters that were under the supervisor's official responsibility during his or her last year of service.

Example 1: During his tenure as Division head, a supervisor's subordinates undertook major changes in agency general enforcement standards. Eighteen months after terminating Government employment, he is asked to represent Z Company which believes it is being unfairly treated under the enforcement program. The Z Company matter first arose on a complaint filed after the Division head terminated his employment.

- He may represent Z Company because "general enforcement standards," like general rulemaking and policy making, are not considered particular matters for purposes of the prohibitions under 18 U.S.C. § 207. In addition, the matter (general enforcement standards) pending under the former Division head's official responsibility was not a particular matter involving "a specific party."

Example 2: Within two years after terminating, a bureau's former Budget Officer is asked to represent Q Company in a dispute arising under a contract which was in effect during her time in office. The dispute concerns an accounting formula under the contract, a matter on which a subordinate of the former officer was consulted.

- She may not represent Q Company on this matter. Even though the subordinate was not the decision maker, the involvement of that person in making a recommendation on the matter was under the "official responsibility" of the former Budget Officer during her last year in office.

Key Elements for 18 U.S.C. § 207(a)(2)

- Knowingly Make

- Appearance or Communication
- Intent to Influence
- To or Before an Employee Within Two Years After Leaving Government Service
- On Behalf of Any Other Person
- U.S. is a Party or Has a Direct and Substantial Interest
- Particular Matter Involving Specific Parties
- Same Particular Matter
- Pending Under Official Responsibility During Last Year of Government Service

18 U.S.C. § 207(b). One-year restriction on aiding and advising with regard to a trade or treaty negotiation.

For one year after Government service terminates, no former employee may knowingly REPRESENT, AID, OR ADVISE, on the basis of covered information, any other person (except the United States) concerning any ongoing trade or treaty negotiation in which, during his or her last year of Government service, he or she participated personally and substantially as an employee. Unlike the lifetime and two-year bans, this restriction prohibits behind-the-scenes assistance to anyone other than the United States in connection with the particular trade or treaty negotiation.

IMPORTANT DEFINITIONS:

“Behind-the-scenes assistance” – is defined the same way as for 18 U.S.C. § 207(a)(1).

"Trade negotiation" - means negotiations which the President determines to undertake to enter into a trade agreement pursuant to 19 U.S.C. § 2902, and does not include any action taken before that determination is made.

"Treaty" - means an international agreement made by the President that requires the advice and consent of the Senate.

"Covered information" - means agency records which were accessible to the employee that he or she knew or should have known were designated as exempt from disclosure under the Freedom of Information Act and which concern a negotiation in which the employee participated personally and substantially during his or her last year of Government service.

Example: A former employee attends a hearing on a treaty in which she had participated while in her last year of Government service. She speaks with the representative of a private party during the hearing. If, during that conversation, the former employee lends assistance to the representative, a violation occurs.

ADDITIONAL RESTRICTION THAT APPLIES ONLY TO FORMER "SENIOR EMPLOYEES"

Senior Employee means all positions included in Levels II through V of the Executive Schedule and those employees whose annual rate of basic pay (excluding locality pay or additional pay such as bonuses, awards, and various allowances) is at or above 86.5% of the annual rate of basic pay for Executive Schedule Level II (that is, at or above \$160,111.50 effective January 10, 2016).

18 U.S.C. § 207(c). One-year restriction on communications with one's former agency

For one year after service in a "senior" position terminates, no former "senior" employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of an agency (see discussion on separate agency components in "Important Factors" section below) in which he or she served in any capacity during the one-year period prior to termination from "senior" service, if the communication or appearance is made on behalf of any other person (except the United States), in connection with **any matter** on which the former senior employee seeks official action by any employee of such agency. This provision does not prohibit behind-the-scenes assistance.

IMPORTANT DEFINITIONS:

“Behind-the-scenes assistance” – is defined the same way as for 18 U.S.C. § 207(a)(1).

“Communication to or appearance before” – is defined the same way as for 18 U.S.C. § 207(a)(1).

“With the intent to influence” – is defined the same way as for 18 U.S.C. § 207(a)(1).

“Matter on which former senior employee seeks official action”

“Seeks official action” – A former senior employee seeks official action when the circumstances establish that he or she is making his communication or appearance for the purpose of inducing a current employee of his or her former agency to make a decision or to otherwise act in his official capacity.

“Matter” – The term “matter” is virtually all-encompassing with respect to the work of the Government. Accordingly, **the prohibition on seeking official action applies with respect to virtually any work of the Government**, including but not limited to:

- any "particular matter involving a specific party or parties";
- a matter that focuses on the interests of a discrete and identifiable class of persons;
- the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons;
- a new matter that was not previously pending at or of interest to the former senior employee's former agency; and
- a matter pending at any other agency in the executive branch, an independent agency, the legislative branch, or the judicial branch.

For example, 18 U.S.C. § 207(c) would prohibit a former senior employee from asking a current employee of his former agency to attend or speak at a conference in the current employee's official capacity, if the former employee is asking on behalf of the conference planner.

IMPORTANT FACTORS:

1. Unlike the lifetime, two-year, and other one-year bans, this one-year "cooling off" ban does not require that the former senior employee have ever been in any way involved in the matter that is the subject of the communication or appearance.

2. This ban only prohibits communications to or appearances before employees of any department or agency in which the former senior employee formerly served in any capacity during the one-year period prior to his or her termination from senior service. However, it does not prohibit "behind-the-scenes" assistance.

3. Separate agency components

a. For purposes of 18 U.S.C. § 207(c) and its implementing regulation 5 C.F.R. § 2641.204 only, the Director of the Office of Government Ethics may designate agency "components" that are distinct and separate from the "parent" agency and from each other. An eligible former "senior" employee who served in the parent agency is not barred by section 207(c) from making communications to or appearances before any employee of any designated component of the parent, but is barred as to any employee of the parent or of any agency or bureau of the parent that has not been designated as a separate component. An eligible former "senior" employee who served in a designated component of the parent agency is barred from communicating to or making an appearance before any employee of that designated component, but is not barred as to any employee of the parent, of another designated component, or of any other agency or bureau of the parent that has not been designated as a separate component.

b. The Director of the Office of Government Ethics has designated the following seven (7) bureaus as separate and distinct agency components within the parent agency Department of the Interior (DOI):

Bureau of Indian Affairs;

Bureau of Land Management;

Bureau of Reclamation;

National Park Service;

Office of Surface Mining Reclamation and Enforcement;

U.S. Fish and Wildlife Service; and

U.S. Geological Survey.

Note that all designated components under the jurisdiction of a particular Assistant Secretary shall be considered a single component for purposes of determining the scope of 18 U.S.C. 207(c) as applied to senior employees serving on the immediate staff of that Assistant Secretary. Thus, a senior employee serving on the immediate staff of an Assistant Secretary is barred from communicating to or making an appearance before any employee of the parent Department of the Interior, as well as all designated components under the jurisdiction of that Assistant Secretary.

Note also that the Bureau of Ocean and Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) are **NOT** designated as separate components.

c. For example, the one-year restriction under 18 U.S.C. § 207(c) only prohibits eligible former senior employees of the National Park Service from making communications to or appearances before employees of the National Park Service; it does not prohibit the eligible former senior employee of the National Park Service from contacting any employee of the parent organization, such as an employee of the Office of the Secretary, or any employee of one of the other designated components, such as an employee of the U.S. Geological Survey.

d. On the other hand, an eligible former senior employee of the parent Department of the Interior, including but not limited to the Office of the Secretary, Office of the Solicitor, Office of Inspector General, BOEM, BSEE, or ONRR, may not communicate to or appear before any of those offices, or any other portion of the Department that is not one of the seven designated components above, but may communicate to or appear before any designated component, such as the Bureau of Reclamation. Such former senior employees should be cautious, however, in that Office of the Solicitor attorneys often participate in various matters alongside employees of the designated component they serve. For example, a former senior employee of the Office of the Secretary may be restricted in her abilities to represent a client in a lawsuit against the National Park Service, as Office of the Solicitor attorneys are likely to represent the National Park Service in the matter.

4. Individuals who have served as Deputy Secretary, Solicitor, Inspector General, as any of the five Assistant Secretaries, as a Bureau Head (other than the Directors of the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement), or as the Chair or an Associate Commissioner of NIGC are not considered eligible former senior employees and, therefore, do not benefit from the designation of separate agency components because they serve in a position for which the rate of pay is specified in or fixed according to the Executive Schedule. (5 CFR § 2641.201(e)(2)(i)). These individuals are prohibited from communicating to or appearing before any employee of the entire Department of the Interior.

5. The matters covered by this ban are broader than those covered by 18 U.S.C. §§ 207(a)(1) or (a)(2). They include virtually any work of the Government.

Example 1: Eleven months after leaving the Department, a former senior employee of the Office of the Secretary wishes to contact a current employee of the Office of the Solicitor, on behalf of a conference planner, to request that the current employee consider speaking in his official capacity at the conference planner's upcoming conference.

- He may not do so. A request that an employee speak at an event is considered a particular matter involving a specific party or parties, in which the event sponsor is a party. And in this instance, the former senior employee would be making his communication or appearance, on behalf of the conference planner, for the purpose of inducing a current employee of his or her former agency to make a decision or to otherwise act in his official capacity in this matter.

Example 2: A senior employee of the Bureau of Reclamation leaves Government employment for private practice and shortly thereafter telephones a former associate urging that the Bureau (a) adopt a new procedure to put a ceiling on costs of grants; (b) not adopt a particular rule proposed for drug testing of Federal employees; (c) oppose a bill pending in Congress relating to Bureau of Reclamation programs.

- These contacts are all prohibited by the one-year ban. The first, not yet pending, is of interest to the Bureau; the second is pending in the Bureau; and the third is pending elsewhere, and is of interest to the Bureau. The former senior employee may communicate his or her views to Congress, other bureaus, other agencies, the public or the press.
- This one-year ban is not limited to "particular matters involving a specific party or parties." It covers general regulations, general legislation, and general policy issues.

Example 3: Eight months after he leaves, a former senior employee of the National Park Service is asked by his employer Z Company to represent them in a new matter pending before the Park Service. The former employee had no prior involvement in the matter and the matter was not previously pending before the Park Service when the employee worked there.

- He may not do so. This one-year ban covers all matters that come up in the employee's former bureau or office within one year after the senior employee leaves. The fact that the matter was not pending when the former senior employee worked in the Park Service is not relevant since this ban covers all matters including those that come up after a senior employee leaves.

Example 4: Eight months after he leaves, a former senior employee serving on the immediate staff of the Office of the Assistant Secretary for Fish and Wildlife and Parks is asked by his employer Z Company to represent Z Company on separate matters pending before the Fish and Wildlife Service and the Bureau of Land Management.

- The former senior employee may appear before the Bureau of Land Management but not before the Fish and Wildlife Service. The Assistant Secretary for Fish and Wildlife and Parks has jurisdiction over the National Park Service (NPS) and the Fish and Wildlife Service (FWS). Therefore, under the component rule above, the former senior employee is barred from contacting the parent Department of the Interior, the NPS, and the FWS. He is not barred from contacting any other designated component of the Department on any of these matters.

Example 5: After leaving the Department, a former Assistant Secretary for Land and Minerals Management becomes a consultant. Six months after leaving his position as Assistant Secretary, he wishes to contact a National Park Service employee on behalf of his client, requesting that the National Park Service employee meet with his client regarding a potential collaborative effort between his client and the National Park Service.

- He may not do so. As a former Assistant Secretary, he is not an eligible senior employee and therefore does not benefit from the designation of separate agency components. In other words, the former Assistant Secretary is banned, for one year after leaving his position, from knowingly making, with the intent to influence, any communication to or appearance before any employee of the Department of the Interior, if the communication or appearance is made on behalf of any other person (except the United States), in connection with **any matter** on which the former senior employee seeks official action by any employee of the Department. The communication would be made with the intent to influence because it would be seeking a discretionary Government action—a decision whether to meet with the former Assistant Secretary’s client. Because the former Assistant Secretary would be making his communication on behalf of his client, the communication is prohibited.

Key Elements for 18 U.S.C. § 207(c)

- Knowingly Make
- Appearance or Communication
- Intent to Influence

- To or Before an Employee of Former Agency Where Served Within One Year of Leaving Senior Service
- On Behalf of Any Other Person
- In Connection with Any Matter Where Seeking Official Action

ADDITIONAL RESTRICTION THAT APPLIES ONLY TO FORMER "VERY SENIOR" EMPLOYEES

Very Senior Employee means an Executive Schedule Level I employee. The only "Very Senior Employee" in the Department of the Interior is the Secretary.

Former Very Senior Employees are subject to all of the provisions that apply to Former Senior Employees, except that 18 U.S.C. § 207(d) applies to them instead of 18 U.S.C. § 207(c).

18 U.S.C. 207(d). Two-year restriction on communications with one's former agency and with any individual in an Executive Level position.

For two years after service in a "very senior" position terminates, no former "very senior" employee may knowingly make, with the intent to influence, any communication to or appearance before:

(1) Any individual appointed to an Executive Schedule position or,

(2) Any employee of an agency in which the former "very senior" employee served during the one-year period prior to termination from a "very senior" employee position

if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter on which the former "very senior" employee seeks official action by any official or employee. This provision does not prohibit behind-the-scenes assistance.

IMPORTANT DEFINITIONS:

"Behind-the-scenes assistance" is defined the same way as for 18 U.S.C. § 207(a)(1).

Example 1: The former Attorney General may not contact the Assistant Attorney General of the Antitrust Division on behalf of a professional sports league in

support of a proposed exemption from certain laws, nor may he contact the Secretary of Labor. He may, however, speak directly to the President or Vice President concerning the issue.

Example 2: The former Director of the Office of Management and Budget (OMB) is now the Chief Executive Officer of a major computer firm and wishes to convince the new Administration to change its new policy concerning computer chips. The former OMB Director may contact an employee of the Department of Commerce who, although paid at a level fixed according to level III of the Executive Schedule, does not occupy a position actually listed in 5 U.S.C. 5312-5316.

Example 3: The former Secretary of the Department of Labor may not represent another person in a meeting with the current Secretary of Transportation to discuss a proposed regulation on highway safety standards.

Example 4: In the previous example, the former Secretary of the Department of Labor would like to meet instead with the special assistant to the Secretary of Transportation. The former Secretary of the Department of Labor knows that the special assistant has a close working relationship with the Secretary of Transportation. The former Secretary of the Department of Labor expects that the special assistant would brief the Secretary of Transportation about any discussions at the proposed meeting and refer specifically to him. Because the circumstances indicate that the former Secretary of the Department of Labor intends that the information provided at the meeting would be conveyed by the assistant directly to the Secretary of Transportation and attributed to him, he may not meet with the assistant.

ADDITIONAL RESTRICTION THAT APPLIES ONLY TO FORMER "SENIOR" AND "VERY SENIOR EMPLOYEES"

18 U.S.C. § 207(f). One-year restriction relating to Foreign Entities.

For one year after service in a senior or Very Senior Employee position terminates, no former Senior Employee or former Very Senior Employee shall knowingly represent a foreign government or foreign political party before an officer or employee of an agency or department of the United States, or aid or advise such a foreign entity, with the intent to influence a decision of such officer or employee. For the purposes of this section, the phrase "officer or employee" includes the President, the Vice President, and Members of

Congress, and the term “department” includes the legislative branch. This provision prohibits behind-the-scenes assistance.

IMPORTANT DEFINITIONS:

“Behind-the-scenes assistance” is defined the same way as for 18 U.S.C. § 207(a)(1).

"Foreign Entity" - means a foreign government or political party as those two terms are defined in the Foreign Agents Registration Act.

Please note, this is another prohibition that not only prohibits direct representational activity by the former Senior Employee, but also prohibits aiding or advising others in their representation before federal entities.

ADDITIONAL RESTRICTION THAT APPLIES ONLY TO THOSE ASSIGNED TO DOI FROM A PRIVATE SECTOR ORGANIZATION UNDER THE INFORMATION TECHNOLOGY EXCHANGE PROGRAM

18 U.S.C. § 207(l). One-year ban on representing, aiding, counseling, or assisting.

For one year after the termination of his or her assignment from a private sector organization to an agency under the Information Technology Exchange Program (5 U.S.C., chapter 37), no former assignee may knowingly represent, aid, counsel, or assist in representing any other person (other than the United States) in connection with any contract with that agency. This provision prohibits behind-the-scenes assistance.

“Behind-the-scenes assistance” is defined the same way as for 18 U.S.C. § 207(a)(1).

OTHER IMPORTANT FEATURES OF 18 U.S.C. § 207

1. For the one-year prohibitions of 18 U.S.C. §§ 207 (c) and (f) and the two-year prohibition of 18 U.S.C. § 207(d), the period is measured from the date when an employee ceases to be a Senior or Very Senior Employee, not from the termination of Government service, unless the two occur simultaneously.

2. An exception is provided to all of the prohibitions of 18 U.S.C. § 207 when the post-employment activities are performed:

(a) in carrying out official duties on behalf of the United States, or

(b) in carrying out official duties as an elected official of a state or local Government.

3. Exceptions are provided to former Senior or Very Senior Employees for the one-year bans of 18 U.S.C. § 207 (c) and the two-year ban of 18 U.S.C. § 207(d) when the communication or appearance is made in carrying out official duties as an employee of and is made on behalf of:

(a) an agency or instrumentality of a State or local Government,

(b) an accredited degree-granting institution of higher education as defined in 20 U.S.C. § 1001, or

(c) a hospital or medical research organization exempted and defined under 26 U.S.C. § 501(c)(3).

4. An exception is provided to all of the prohibitions of 18 U.S.C. § 207 for a former employee who is carrying out official duties as an employee or as an elected or appointed official of a tribal organization or inter-tribal consortium when communicating or appearing on behalf of such tribal organization or inter-tribal consortium in connection with any matter related to a tribal governmental activity or Federal Indian program or service pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest. In order for this exception to apply, the former employee must advise, in writing, the head of the department, agency, court, or commission with which he or she is dealing or before which he or she is appearing on behalf of the tribal organization or inter-tribal consortium of any personal and substantial involvement he or she may have had as an officer or employee of the United States in connection with the matter involved. (See 25 U.S.C. § 450i(j).) Contact your ethics official if you think this exception may apply to you.

5. The restrictions of 18 U.S.C. §§ 207(a)(1), (a)(2), (c), and (d) do not apply to communications made solely for the purpose of furnishing scientific or technological information pursuant to agency procedures.

6. The restrictions of 18 U.S.C. §§ 207(c) and (d) do not prevent a former Senior or Very Senior Employee from making or providing a statement, which is based on the former employee's own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received. A "statement," for purposes of

this exception, is a communication of facts observed by the former employee. Compensation includes any form of remuneration or income that is given in consideration, in whole or in part, for the statement. It does not include the payment of actual or necessary expenses incurred in connection with making the statement.

7. The restrictions of 18 U.S.C. §§ 207(c) and (d) do not apply to certain communications or appearances by former Senior or Very Senior Employees made solely on behalf of a candidate in his or her capacity as a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party. For this exception to apply, the former Senior or Very Senior Employee may not be employed by anyone other than the candidate, one of the specified political organizations, or a person or entity who exclusively represents or advises such candidates or political organizations.

8. Contacts with and appearances before Congress are not prohibited by 18 U.S.C. §§ 207(a)(1), (a)(2), (c), and (d).

9. Subject to certain limitations concerning expert witness testimony, a former employee is not prohibited by any of the prohibitions of 18 U.S.C. § 207 from giving testimony under oath or making a statement required to be made under penalty of perjury.

18 U.S.C. § 203

Prohibition Against Receiving Compensation for "Representational Services"

18 U.S.C. § 203 prohibits a former employee from receiving any compensation for "representational services" in connection with a particular matter in which the United States is a party or has a direct and substantial interest, if the covered representational services were provided at a time when the individual was a Government employee, and regardless of whether or not the individual personally provided those representational services.

"Representational services" means communications to or appearances before Federal entities with the intent to influence the Government on behalf of a third party. This includes legal and consulting services.

The prohibition applies equally to representational services rendered by the former employee personally or by another if the employee shares in the compensation.

Accordingly, a former employee may not share in compensation received by his or her new employer for representational services it provided to a third party, in connection with

a particular matter in which the United States is a party or has a direct and substantial interest, at the time the former employee worked for the Government.

PENALTIES AND INJUNCTIONS FOR VIOLATION OF

18 U.S.C. §§ 203, 207, and 208

(a) Whoever engages in conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in Title 18 of the United States Code, or both.

(b) Whoever WILLFULLY engages in conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in Title 18 of the United States Code, or both.

(c) The Attorney General may bring a civil action in the appropriate U.S. District Court against any person who engages in conduct constituting an offense under 18 U.S.C. §§ 203, 207 or 208 and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$55,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of such a civil penalty does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available to the U.S. or any other person.

(d) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under 18 U.S.C. §§ 203, 207, or 208, the Attorney General may petition an appropriate U.S. district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of such a petition does not preclude any other remedy which is available by law to the United States or any other person.

These penalties can be found in 18 U.S.C. § 216 (as modified by 28 C.F.R. § 85.3).

PROCUREMENT INTEGRITY ACT

41 U.S.C. § 2104; 48 C.F.R. §§ 3.104-1 to 3.104-9

You may not accept compensation from a contractor that has been awarded a competitive or sole source contract, as an employee, officer, director, or consultant of the contractor within a period of 1 year after you—

1. Served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10 million;

2. Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10 million awarded to that contractor; or

3. Personally made for the Federal agency a decision to—

a. Award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10 million to that contractor;

b. Establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10 million;

c. Approve issuance of a contract payment or payments in excess of \$10 million to that contractor; or

d. Pay or settle a claim in excess of \$10 million with that contractor.

Additionally, you may not disclose “contractor bid or proposal information” or “source selection information,” before the award of a Federal agency procurement contract to which the information relates, other than as provided for by law.

You should consult your ethics counselor if you require additional information on the Procurement Integrity Act.

ETHICS PLEDGE PROVISIONS FOR POLITICAL APPOINTEES

Political Appointee. The term “political appointee” includes every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency.

Revolving Door Ban: Appointees Leaving Government. A political appointee who is subject to the post-employment restrictions of 18 U.S.C. § 207(c) (see above) must abide by those restrictions for a period of 2 years following the end of his or her appointment, as opposed to the 1-year period that applies for non-political appointees.

Revolving Door Ban: Appointees Leaving Government to Lobby. A political appointee is prohibited, upon leaving Government service, from lobbying any of the following individuals for the remainder of the Administration:

1. the President;
2. the Vice President;
3. any official in the Executive Office of the President;
4. any Executive Schedule official (EL I-V);
5. any uniformed officer at pay grade O-7 or above;
6. any Schedule C employee; and
7. any non-career SES member.

OUTER CONTINENTAL SHELF LANDS ACT RESTRICTIONS

43 U.S.C. § 1355

No full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under the Outer Continental Shelf Lands Act, and who was at any time during the 12 months preceding the termination of his or her employment with the Department compensated under the Executive Schedule or compensated at or above the annual rate of basic pay for grade GS-16 of the General Schedule shall--

(1) within 2 years after his or her employment with the Department has ceased--

(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before;

(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to; or

(C) knowingly aid or assist (including behind-the-scenes assistance) in representing any other person (except the United States) in any formal or informal appearance before,

any department, agency, or court of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, regulation, order, lease, permit, rulemaking, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest which was actually pending under his or her official responsibility as an officer or employee within a period of 1 year prior to the termination of such responsibility or in which he or she participated personally and substantially as an officer or employee; or

(2) within one year after his or her employment with the Department has ceased--

(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before; or

(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to,

the Department of the Interior, or any officer or employee thereof, in connection with any judicial, rulemaking, regulation, order, lease, permit, regulation, or other particular matter which is pending before the Department of the Interior or in which the Department has a direct and substantial interest.

ADDITIONAL CONSIDERATIONS FOR ATTORNEYS

Attorney Professional Responsibility. Attorneys are generally subject to the professional responsibility rules of the jurisdiction(s) in which they are licensed. These rules are separate and distinct from the Federal Government ethics statutes and regulations. For example, Rule 1.11 of the American Bar Association Model Rules of Professional Conduct contains special conflicts of interest provisions for former and current Government officers and employees. Accordingly, attorneys should check with their licensing jurisdiction(s) to determine whether any professional responsibility rules may impact their post-Government employment plans.

POINTS OF CONTACT

- **DEPARTMENTAL ETHICS OFFICE**
202-208-7960
- **BUREAU OF INDIAN AFFAIRS (BIA)**
406-247-1295
- **BUREAU OF RECLAMATION (USBR)**
303-445-2727
- **BUREAU OF OCEAN ENERGY MANAGEMENT (BOEM)**
703-787-1648
- **BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT (BSEE)**
703-787-1417
- **OFFICE OF NATURAL RESOURCES REVENUE (ONRR)**
202-513-0344
- **NATIONAL PARK SERVICE (NPS)**
202-354-1981
- **OFFICE OF THE INSPECTOR GENERAL (OIG)**
703-487-5439
- **OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT (OSMRE)**
202-208-2704
- **U.S. FISH AND WILDLIFE SERVICE (USFWS)**
503-326-2008 or 703-358-2534
- **U.S. GEOLOGICAL SURVEY (USGS)**
703-648-7422, 7439, and 7474
- **BUREAU OF LAND MANAGEMENT (BLM)**
202-912-7486
- **NATIONAL INDIAN GAMING COMMISSION (NIGC)**
202-606-0113 or 202-379-6972

- **OFFICE OF THE SPECIAL TRUSTEE (OST)**
505-816-1400

THIS DOCUMENT PROVIDES ONLY A SUMMARY OF THE POST-EMPLOYMENT RESTRICTIONS. IF YOU HAVE ANY QUESTIONS REGARDING ANY OF THESE RESTRICTIONS, YOU SHOULD SEEK THE ADVICE OF YOUR SERVICING ETHICS COUNSELOR OR THE DEPARTMENTAL ETHICS OFFICE AT:

U.S. DEPARTMENT OF THE INTERIOR
DEPARTMENTAL ETHICS OFFICE
1849 C ST. NW – MS 7346
WASHINGTON, D.C. 20240
(202) 208-7960

